



Rep. Christian L. Mitchell

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LRB099 09115 MRW 33111 a

1 AMENDMENT TO HOUSE BILL 3423

2 AMENDMENT NO. _____. Amend House Bill 3423 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Sections 122-1, 122-2.1, and 122-6 and by
6 adding Section 122-0.5 as follows:

7 (725 ILCS 5/122-0.5 new)

8 Sec. 122-0.5. Definitions. As used in this Article:

9 "Domestic violence" means "abuse" as defined in Section 103
10 of the Illinois Domestic Violence Act of 1986.

11 "Forcible felony" has the meaning ascribed to the term in
12 Section 2-8 of the Criminal Code of 2012.

13 "Intimate partner" means spouses, former spouses, persons
14 who have or allegedly have a child in common, or persons who
15 have or have had a dating or engagement relationship.

1 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

2 Sec. 122-1. Petition in the trial court.

3 (a) Any person imprisoned in the penitentiary may institute
4 a proceeding under this Article if the person asserts that:

5 (1) in the proceedings which resulted in his or her
6 conviction there was a substantial denial of his or her
7 rights under the Constitution of the United States or of
8 the State of Illinois or both; ~~or~~

9 (2) the death penalty was imposed and there is newly
10 discovered evidence not available to the person at the time
11 of the proceeding that resulted in his or her conviction
12 that establishes a substantial basis to believe that the
13 defendant is actually innocent by clear and convincing
14 evidence; or -

15 (3) his or her participation in the forcible felony for
16 which he or she was convicted was a result of having been a
17 victim of domestic violence as perpetrated by an intimate
18 partner, and evidence of the domestic violence was not
19 presented at trial or sentencing.

20 (a-5) A proceeding under paragraph (2) of subsection (a)
21 may be commenced within a reasonable period of time after the
22 person's conviction notwithstanding any other provisions of
23 this Article. In such a proceeding regarding actual innocence,
24 if the court determines the petition is frivolous or is
25 patently without merit, it shall dismiss the petition in a
26 written order, specifying the findings of fact and conclusions

1 of law it made in reaching its decision. Such order of
2 dismissal is a final judgment and shall be served upon the
3 petitioner by certified mail within 10 days of its entry.

4 (b) The proceeding shall be commenced by filing with the
5 clerk of the court in which the conviction took place a
6 petition (together with a copy thereof) verified by affidavit.
7 Petitioner shall also serve another copy upon the State's
8 Attorney by any of the methods provided in Rule 7 of the
9 Supreme Court. The clerk shall docket the petition for
10 consideration by the court pursuant to Section 122-2.1 upon his
11 or her receipt thereof and bring the same promptly to the
12 attention of the court.

13 (c) Except as otherwise provided in subsection (a-5) or
14 (c-5), if the petitioner is under sentence of death and a
15 petition for writ of certiorari is filed, no proceedings under
16 this Article shall be commenced more than 6 months after the
17 conclusion of proceedings in the United States Supreme Court,
18 unless the petitioner alleges facts showing that the delay was
19 not due to his or her culpable negligence. If a petition for
20 certiorari is not filed, no proceedings under this Article
21 shall be commenced more than 6 months from the date for filing
22 a certiorari petition, unless the petitioner alleges facts
23 showing that the delay was not due to his or her culpable
24 negligence.

25 When a defendant has a sentence other than death, no
26 proceedings under this Article shall be commenced more than 6

1 months after the conclusion of proceedings in the United States
2 Supreme Court, unless the petitioner alleges facts showing that
3 the delay was not due to his or her culpable negligence or the
4 petitioner has instituted a proceeding under paragraph (3) of
5 subsection (a) of this Section. If a petition for certiorari is
6 not filed, no proceedings under this Article shall be commenced
7 more than 6 months from the date for filing a certiorari
8 petition, unless the petitioner alleges facts showing that the
9 delay was not due to his or her culpable negligence or the
10 petitioner has instituted a proceeding under paragraph (3) of
11 subsection (a) of this Section. If a defendant does not file a
12 direct appeal, the post-conviction petition shall be filed no
13 later than 3 years from the date of conviction, unless the
14 petitioner alleges facts showing that the delay was not due to
15 his or her culpable negligence or the petitioner has instituted
16 a proceeding under paragraph (3) of subsection (a) of this
17 Section.

18 This limitation does not apply to a petition advancing a
19 claim of actual innocence.

20 (c-5) A proceeding under paragraph (3) of subsection (a) of
21 this Section may be commenced (1) within 3 years following the
22 entry of a verdict or finding of guilty, or (2) within 2 years
23 of beginning counseling services while incarcerated directly
24 related to the domestic violence suffered, whichever occurs
25 latest, provided that reasonable notice of the proceeding shall
26 be served upon the State and the victim as defined by the

1 Rights of Crime Victims and Witnesses Act. No limitations under
2 this subsection or subsection (d) apply to a petition advancing
3 a claim of actual innocence.

4 (d) A person seeking relief by filing a petition under this
5 Section must specify in the petition or its heading that it is
6 filed under this Section. A trial court that has received a
7 petition complaining of a conviction or sentence that fails to
8 specify in the petition or its heading that it is filed under
9 this Section need not evaluate the petition to determine
10 whether it could otherwise have stated some grounds for relief
11 under this Article.

12 (e) A proceeding under this Article may not be commenced on
13 behalf of a defendant who has been sentenced to death without
14 the written consent of the defendant, unless the defendant,
15 because of a mental or physical condition, is incapable of
16 asserting his or her own claim.

17 (f) Unless the petitioner has instituted a proceeding under
18 paragraph (3) of subsection (a) of this Section, only ~~only~~ one
19 petition may be filed by a petitioner under this Article
20 without leave of the court. Leave of court may be granted only
21 if a petitioner demonstrates cause for his or her failure to
22 bring the claim in his or her initial post-conviction
23 proceedings and prejudice results from that failure. For
24 purposes of this subsection (f): (1) a prisoner shows cause by
25 identifying an objective factor that impeded his or her ability
26 to raise a specific claim during his or her initial

1 post-conviction proceedings; and (2) a prisoner shows
2 prejudice by demonstrating that the claim not raised during his
3 or her initial post-conviction proceedings so infected the
4 trial that the resulting conviction or sentence violated due
5 process. A proceeding under paragraph (3) of subsection (a) of
6 this Section may be instituted concurrently with any other
7 proceeding under this Article.

8 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;
9 93-972, eff. 8-20-04.)

10 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

11 Sec. 122-2.1. (a) Within 90 days after the filing and
12 docketing of each petition, the court shall examine such
13 petition and enter an order thereon pursuant to this Section.

14 (1) If the petitioner is under sentence of death and is
15 without counsel and alleges that he or she is without means
16 to procure counsel, he or she shall state whether or not he
17 or she wishes counsel to be appointed to represent him or
18 her. If appointment of counsel is so requested, the court
19 shall appoint counsel if satisfied that the petitioner has
20 no means to procure counsel.

21 (2) If the petitioner is sentenced to imprisonment and
22 the court determines the petition is frivolous or is
23 patently without merit, it shall dismiss the petition in a
24 written order, specifying the findings of fact and
25 conclusions of law it made in reaching its decision. Such

1 order of dismissal is a final judgment and shall be served
2 upon the petitioner by certified mail within 10 days of its
3 entry.

4 (b) If the petition is not dismissed pursuant to this
5 Section, the court shall order the petition to be docketed for
6 further consideration in accordance with Sections 122-4
7 through 122-6. If the petitioner is under sentence of death,
8 the court shall order the petition to be docketed for further
9 consideration and hearing within one year of the filing of the
10 petition. Continuances may be granted as the court deems
11 appropriate.

12 (c) In considering a petition pursuant to this Section, the
13 court may examine the court file of the proceeding in which the
14 petitioner was convicted, any action taken by an appellate
15 court in such proceeding and any transcripts of such
16 proceeding.

17 (Source: P.A. 93-605, eff. 11-19-03.)

18 (725 ILCS 5/122-6) (from Ch. 38, par. 122-6)

19 Sec. 122-6. Disposition in trial court.

20 The court may receive proof by affidavits, depositions,
21 oral testimony, or other evidence. In its discretion the court
22 may order the petitioner brought before the court for the
23 hearing. If the petitioner has instituted a proceeding under
24 paragraph (3) of subsection (a) of Section 122-1, the petition
25 shall state why the facts giving rise to this petition were not

1 presented to the trial court. The petition shall identify any
2 previous proceedings that the petitioner may have taken to
3 secure relief from his or her conviction. Argument and
4 citations and discussion of authorities shall be omitted from
5 the petition. As evidence that petitioner's participation in
6 the forcible felony for which he or she was convicted was a
7 result of having been a victim of domestic violence as
8 perpetrated by an intimate partner, the court may receive
9 evidence that may include, but is not limited to:

10 (1) certified records of federal or State court
11 proceedings which demonstrate that the defendant was a
12 victim of an offender charged with a domestic violence
13 offense under Section 12-3.2, 12-3.3, 12-3.4 or 12-30,
14 12-3.5, or 12-3.6 of the Criminal Code of 1961 or the
15 Criminal Code of 2012, or under 18 U.S.C 922(q) (8) or 18
16 U.S.C. 922(q) (9);

17 (2) certified records of "approval notices" or "law
18 enforcement certifications" generated from federal
19 immigration proceedings available to the victims under the
20 Victims of Trafficking and Violence Prevention Act of 2000
21 or the Violence Against Women Reauthorization Act of 2013;

22 (3) a sworn statement from a licensed medical or mental
23 health care provider, employee of a court acting within the
24 scope of his or her employment, clergy, attorney, social
25 worker, or rape crisis counselor, advocate from an agency
26 assisting victims of domestic violence, or other

1 professional from whom the defendant has sought assistance
2 in addressing the trauma associated with domestic
3 violence; or

4 (4) any other evidence as it deems of sufficient
5 credibility and probative value in determining whether the
6 defendant is a victim of domestic violence.

7 If the court finds in favor of the petitioner, it shall
8 enter an appropriate order with respect to the judgment or
9 sentence in the former proceedings and such supplementary
10 orders as to rearraignment, retrial, custody, bail or discharge
11 as may be necessary and proper.

12 (Source: Laws 1963, p. 2836.)

13 Section 10. The Unified Code of Corrections is amended by
14 changing Section 5-5-3.1 as follows:

15 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

16 Sec. 5-5-3.1. Factors in Mitigation.

17 (a) The following grounds shall be accorded weight in favor
18 of withholding or minimizing a sentence of imprisonment:

19 (1) The defendant's criminal conduct neither caused
20 nor threatened serious physical harm to another.

21 (2) The defendant did not contemplate that his criminal
22 conduct would cause or threaten serious physical harm to
23 another.

24 (3) The defendant acted under a strong provocation.

1 (4) There were substantial grounds tending to excuse or
2 justify the defendant's criminal conduct, though failing
3 to establish a defense.

4 (5) The defendant's criminal conduct was induced or
5 facilitated by someone other than the defendant.

6 (6) The defendant has compensated or will compensate
7 the victim of his criminal conduct for the damage or injury
8 that he sustained.

9 (7) The defendant has no history of prior delinquency
10 or criminal activity or has led a law-abiding life for a
11 substantial period of time before the commission of the
12 present crime.

13 (8) The defendant's criminal conduct was the result of
14 circumstances unlikely to recur.

15 (9) The character and attitudes of the defendant
16 indicate that he is unlikely to commit another crime.

17 (10) The defendant is particularly likely to comply
18 with the terms of a period of probation.

19 (11) The imprisonment of the defendant would entail
20 excessive hardship to his dependents.

21 (12) The imprisonment of the defendant would endanger
22 his or her medical condition.

23 (13) The defendant was intellectually disabled as
24 defined in Section 5-1-13 of this Code.

25 (14) The defendant sought or obtained emergency
26 medical assistance for an overdose and was convicted of a

1 Class 3 felony or higher possession, manufacture, or
2 delivery of a controlled, counterfeit, or look-alike
3 substance or a controlled substance analog under the
4 Illinois Controlled Substances Act or a Class 2 felony or
5 higher possession, manufacture or delivery of
6 methamphetamine under the Methamphetamine Control and
7 Community Protection Act.

8 (15) At the time of the offense, the defendant is or
9 had been the victim of domestic violence and the effects of
10 the domestic violence tended to excuse or justify the
11 defendant's criminal conduct. As used in this paragraph,
12 "domestic violence" means "abuse" as defined in Section 103
13 of the Illinois Domestic Violence Act of 1986.

14 (b) If the court, having due regard for the character of
15 the offender, the nature and circumstances of the offense and
16 the public interest finds that a sentence of imprisonment is
17 the most appropriate disposition of the offender, or where
18 other provisions of this Code mandate the imprisonment of the
19 offender, the grounds listed in paragraph (a) of this
20 subsection shall be considered as factors in mitigation of the
21 term imposed.

22 (Source: P.A. 97-227, eff. 1-1-12; 97-678, eff. 6-1-12; 98-463,
23 eff. 8-16-13.)".